

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DREAMSCAPES LANDSCAPE &
DESIGN, LLC,

Plaintiff,

v.

BELL'S MACHINE SHOP LTD,

Defendant.

CASE NO. C21-5159 RJB

ORDER

This matter comes before the Court on Defendant Eastonmade Manufacturing, Inc.'s¹ Motion to Dismiss, Dkt. 12. The Court has considered the briefing filed in support of and in opposition to the motion and the remainder of the file and grants in part and denies in part the motion for the reasons stated below.

¹ Dreamscapes initiated this lawsuit against "Bell's Machine Shop Ltd. d/b/a Bell's Machining." *See* Dkt. 1-2. Defendant clarified in its first motion to dismiss that its proper name was 2134828 Ontario Ltd., d/b/a Bell's Machining, and that there was no such entity called "Bell's Machine Shop Ltd." Dkt. 3 at 5 n.1. Defendant recently submitted a notice of name change indicating that 2134828 Ontario Ltd., d/b/a/ Bell's Machining has changed its name to Eastonmade Manufacturing Inc. Dkt. 17. For clarity going forward, the Court refers to Defendant as "Eastonmade" in this Order.

I. BACKGROUND

Plaintiff alleges the following facts in the pleadings filed. Eastonmade is a Canadian corporation that manufactures and sells firewood processing machines. Dkt. 11, ¶ 2.1. Plaintiff Dreamscapes Landscaping and Design, LLC is a Washington company that agreed to purchase an 8000 Series Circular Saw Firewood Processor from Eastonmade in May 2020 for \$161,300. *Id.* ¶ 2.1. The Parties executed a Sales Invoice reflecting their agreement. Dkt. 11 at 11. Dreamscapes paid Eastonmade an \$18,000 deposit on May 28, 2020 and alleges that Eastonmade agreed to deliver the product in eight-to-ten weeks. *Id.* ¶ 2.3. Eastonmade issued a sales invoice on August 26, 2020, *see id.*, Ex. A, and Dreamscapes paid Eastonmade an additional \$130,000 on September 2, 2020. *Id.* ¶ 2.4. The sales invoice does not list a shipping date or due date. *Id.*, Ex. A. Eastonmade delivered the processor to Dreamscapes on September 10, 2020—about 15 weeks after Dreamscapes first paid the \$18,000 deposit and about 1 week after Dreamscapes made the \$130,000 payment. *Id.* ¶ 2.5. Dreamscapes alleges that at that time the parties were working on a payment plan for the remainder due. *Id.*

About a month later, on October 14, 2020, Eastonmade informed Dreamscapes that the processor needed to be returned to the United States–Canada border by noon the following day due to import issues identified by the United States Customs and Border Protection Agency (“CBP”). *Id.* ¶ 2.6; *see also id.*, Ex. B. Eastonmade agreed to reduce the amount still owing on the processor by \$10,000 to account for the costs Dreamscapes would incur by decommissioning and delivering the processor. Dkt. 11, ¶ 2.7. Dreamscapes delivered the processor back to the border on October 15, 2020, as requested. *Id.* ¶ 2.8. In the meantime, Eastonmade provided Dreamscapes a temporary replacement processor, but the processor was unusable because it required repairs and was missing parts. *Id.* ¶ 2.9.

1 Dreamscales alleges that Eastonmade's owner, Brent Easton, indicated on November 23,
2 2020 that the processor would be redelivered to Dreamscales within seven to ten business days.
3 As of August 2021, when Dreamscales responded to the instant motion, Eastonmade still had
4 not delivered the processor, provided an updated timeline for its delivery, or refunded the money
5 Dreamscales paid. *See* Dkt. 15. Dreamscales also claims that it was informed by CBP that the
6 processor does not meet United States National Highway Traffic Safety Association ("NHTSA")
7 requirements and that it cannot be imported until Eastonmade satisfies those requirements. Dkt.
8 11, ¶ 2.11.

9 Dreamscales sued in March 2021, asserting Eastonmade breached their contract,
10 breached express and implied warranties, and violated the Washington Consumer Protection Act
11 ("CPA"). Dkt. 1-2. Eastonmade moved to dismiss in March 2021, Dkt. 3, and the Court granted
12 that motion, Dkt. 10, holding that Dreamscales failed to state a claim upon which relief could be
13 granted, but granted Dreamscales leave to amend. Specifically, the Court held that Dreamscales
14 failed to allege facts that it had satisfied its own obligations under the contract, failed to identify
15 the contract provisions Eastonmade breached, and failed to identify any warranties Eastonmade
16 breached. Dkt. 10. Dreamscales amended its complaint, dropping the CPA claims, and adding
17 facts and allegations regarding its satisfaction of its own contractual obligations and
18 Eastonmade's breaches. Dkt. 11.

19 Eastonmade now moves to dismiss under Federal Rule of Civil Procedure 12(b)(6),
20 arguing that Dreamscales' amended complaint suffers from the same deficiencies as the original:
21 failing to allege that Dreamscales satisfied its own contractual obligations and failing to identify
22 the provisions of the contract that were breached. Dkt. 12. Eastonmade also argues that there is
no plausible breach of warranty claim because Dreamscales does not challenge either the quality

1 or the title of the processor. *Id.* Dreamscapes argues that it has plausibly alleged that it satisfied
 2 its contractual obligations, that Eastonmade breached specific provisions of the contract, and that
 3 Eastonmade breached both express and implied warranties. Dkt. 15.

4 II. DISCUSSION

5 A. Motion to Dismiss Standard

6 Dismissal under Federal Rule of Civil Procedure 12(b)(6) may be based on either the lack
 7 of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal
 8 theory. *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir. 1990). A plaintiff's
 9 complaint must allege facts to state a claim for relief that is plausible on its face. *See Ashcroft v.*
 10 *Iqbal*, 556 U.S. 662, 678 (2009). A claim has "facial plausibility" when the party seeking relief
 11 "pleads factual content that allows the court to draw the reasonable inference that the defendant
 12 is liable for the misconduct alleged." *Id.* Although the court must accept as true the Complaint's
 13 well-pled facts, conclusory allegations of law and unwarranted inferences will not defeat an
 14 otherwise proper 12(b)(6) motion to dismiss. *Vazquez v. Los Angeles Cnty.*, 487 F.3d 1246, 1249
 15 (9th Cir. 2007); *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). "[A]
 16 plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than
 17 labels and conclusions, and a formulaic recitation of the elements of a cause of action will not
 18 do. Factual allegations must be enough to raise a right to relief above the speculative level." *Bell*
 19 *Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (citations and footnotes omitted). This requires
 20 a plaintiff to plead "more than an unadorned, the-defendant-unlawfully-harmed-me-accusation."
 21 *Iqbal*, 556 U.S. at 678 (citing *id.*).

22 B. Breach of Contract

Eastonmade argues that Dreamscapes failed to state a claim under Rule 12(b)(6) because
 Dreamscapes neither pled facts establishing that it performed all its obligations under the

1 contract, nor did it specify provisions of the contract Eastonmade allegedly breached. Dkt. 12 at
 2 9–14. Dreamscapes argues that it meet all its obligations under the contract and that it was
 3 relieved of its duty to pay the full contract price because of Eastonmade’s anticipatory
 4 repudiation. Dkt. 15 at 4–6. Dreamscapes also argues that it identified five specific ways in
 5 which Eastonmade breached the contract: “failing to deliver the Processor within eight to ten
 6 weeks following Dreamscapes’ deposit payment;” “requiring return of the processor;” “failing to
 7 provide the Processor back to Dreamscapes within seven to ten business days as promised;”
 8 “failing to meet its verbal assurances of delivery;” and “refusing to refund the purchase price for
 9 the Processor.” *Id.* at 4.

10 For a breach of contract claim, Dreamscapes must allege (1) the existence of a contract,
 11 (2) a material breach of that contract, and (3) resulting damage. *Nw. Indep. Forest Mfrs. v. Dep’t*
 12 *of Labor & Indus.*, 78 Wn. App. 707, 712 (1995). A breach of contract claim must allege that the
 13 conditions to the defendant’s performance have been satisfied. *Kubix v. Intrexon, Inc.*, No. C11-
 14 0972, 2011 WL 13232587, at *1 (W.D. Wash. Sept. 22, 2011) (citing *Ross v. Harding*, 64 Wn.2d
 15 231, 240–41 (1964)). It must also indicate which provisions of the contract were breached.
 16 *Elliott Bay Seafoods, Inc. v. Port of Seattle*, 124 Wn. App. 5, 12 (2004).

17 Dreamscapes alleges all three elements of a breach of contract claim by contending that
 18 there was a contract, Eastonmade breached that contract, and Dreamscapes has suffered
 19 damages. The instant motion centers instead on whether Dreamscapes plausibly alleges that the
 20 conditions to Eastonmade’s performance were satisfied and whether Dreamscapes plausibly
 21 alleges which provisions of the contract were breached. Dreamscapes meets both standards.

22 Eastonmade argues that Dreamscapes did not satisfy its obligations under the Contract
 because it never paid the full purchase price for the Processor. Dkt. 12 at 10. The Amended

1 Complaint, however, claims that Dreamscapes “satisfied all of its obligations under the
2 Contract,” Dkt. 11 at 6, and that the Parties modified the contract by reducing the purchase price
3 and through Eastonmade’s agreement to defer payment in full until the Processor was
4 redelivered, *id.* at 4. Dreamscapes supports these claims with alleged facts, including that it paid
5 a deposit of \$18,000 and a second payment of \$130,000 and that Eastonmade delivered the
6 processor, at which point the parties were “working towards a payment plan for the remaining
7 balance due.” Dkt. 11 at 2–3. It is reasonable to infer based on these facts that the parties orally
8 modified the contract to allow Dreamscapes to pay the remaining balance via a payment plan.
9 *See Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998) (explaining that the court must draw
10 reasonable inferences from the complaint in reviewing a motion to dismiss). Eastonmade
11 making the initial Processor deliver without receiving payment in full supports this inference. It
12 is also reasonable to infer that Dreamscapes could have satisfied its obligations through
13 substantial performance by paying most of the purchase price such that Eastonmade could not
14 willfully breach the contract by failing to deliver the purchased product. *See DC Farms, LLC v.*
Conagra Foods Lamb Weston, Inc., 179 Wn.App. 205, 221 (2014).

15 Dreamscapes also plausibly alleges that that Eastonmade breached the contract by failing
16 to deliver the processor within ten weeks of Dreamscapes’ deposit. Dreamscapes and
17 Eastonmade made an oral agreement to this effect that was ultimately memorialized in an invoice
18 (a confirmatory memorandum) sent by Eastonmade to Dreamscapes. While a confirmatory
19 memorandum “may not be contradicted by evidence of any prior agreement,” it may be
20 supplemented by “course of performance, course of dealing or usage of trade” and by “evidence
21 of consistent additional terms unless the court finds the writing to have been intended also as a
22 complete and exclusive statement of the terms of the agreement.” RCW 62A.2-202.

1 Dreamscales' allegation that the parties agreed on an eight to ten week delivery date is not
2 contradicted by the blank shipping date and due date boxes on the invoice. It is plausible that the
3 parties did agree on such a timeframe.

4 The provided facts, read in favor of Dreamscales, also suggest that the contract was
5 modified on October 15, 2020, when Dreamscales agreed to return the processor to the border in
6 exchange for a \$10,000 reduction in purchase price. Eastonmade's argument that it is not
7 required to return the processor to Dreamscales because Dreamscales has yet to pay the full
8 amount due is likely defeated if the contract was modified. Without another agreement, payment
9 is due upon delivery. RCW 62A.2-310(a). Thus, Dreamscales would have no obligation to pay
10 Eastonmade until the processor was re-delivered. Similarly, it is plausible that the parties agreed
11 on a seven to ten business day timeframe. Absent an agreement, the default timeframe for
12 shipment or delivery is a "reasonable" one. RCW 62A.2-309(1). It appears unreasonable to keep
13 a mostly paid for product for over a year, especially without providing a usable replacement or a
14 refund.

15 Eastonmade's arguments that it was not required to perform under the contract because of
16 Dreamscales' underpayment and that it did not breach the contract are unpersuasive at this time.
17 Eastonmade previously delivered the processor despite the underpayment. Its reason for
18 reclaiming the processor was import issues, not because of money owed. Furthermore,
19 Eastonmade admits that it agreed to provide Dreamscales the processor, that Dreamscales paid
20 most of the amount due for the processor, that Eastonmade required Dreamscales to return the
21 processor because of import issues, and that Eastonmade told Dreamscales it would return the
22 processor when the issue at the border had been resolved. Eastonmade also admits that it has

1 neither redelivered the processor, nor has it refunded Dreamscapes. Meanwhile, Dreamscapes
2 has been without a functioning processor and repaying a loan for the processor it cannot use.

3 Dreamscaps will still need to meet its burden of proof moving forward. Nothing in this
4 order should be construed as making a conclusion about a disputed issue of fact or about whether
5 Eastonmade breached the contract. This order finds only that Dreamscapes plausibly pleads that
6 Eastonmade could have based on the facts alleged. Therefore, Eastonmade's motion to dismiss
7 Dreamscapes' breach of contract claim is DENIED.

8 **C. Breach of Express and Implied Warranties**

9 Dreamscapes argues that Eastonmade violated the warranty of title and against
10 infringement pursuant to RCW 62A.2-312. Dkt. 11 at 6. Under that provision, a seller warrants
11 that (1) title is good and transfer is rightful, and (2) the goods are free of any security interest,
12 lien, or encumbrance that the buyer is unaware of. RCW 62A.2-312(1). Dreamscapes has not
13 pled any facts suggesting there is any flaw in the processor's title. The processor's failure to
14 satisfy NHTSA requirements is unrelated to title. There is no suggestion that any third party has
any claim to the processor which would affect its title.

15 Dreamscapes next argues that Eastonmade violated the implied warranties of
16 merchantability, usage of trade, and fitness for a particular purpose under RCW 62A.2-314 and
17 315. Dkt. 11 at 6. All of these warranties relate to the character and quality of the good. *See*
18 *Letres v. Washington Co-Op Chick Ass'n*, 8 Wn.2d 64, 68 (1941) ("Generally speaking, a
19 warranty is a statement or representation having reference to the character, quality, or title of the
20 goods."). Courts have previously held that failure to comply with federal regulations can
21 constitute a breach of these warranties. *See, e.g., Geo. Byers Sons, Inc. v. East Europe Import*
22 *Export, Inc.*, 488 F. Supp. 574, 580 (D. Md. 1980). While Dreamscapes does not specify which
NHTSA requirements are at issue here, the fact that the processor cannot be imported, apparently

1 because it is not fit for transport on roads in the United States, relates to the character and quality
2 of the product. The machine may properly process firewood, it is not merchantable for the
3 proffered usage if it is unusable in the United States.

4 Finally, Dreamscapes alleges that Eastonmade violated express warranties to deliver the
5 processor within eight to ten weeks and to re-deliver the processor within seven to ten days. Dkt.
6 11 at 7. While these assurances may have formed contractual obligations, they do not amount to
7 express warranties under RCW 62A.2-313, which contemplate whether the goods “conform” to
8 the seller’s affirmation, promise, description, sample, or model. Dreamscapes has not alleged
9 that the goods did not conform, only that Eastonmade’s deliveries were untimely.

10 Therefore, Eastonmade’s motion is GRANTED as to Dreamscapes’ express warranty
11 claims and implied warranty of title claims and DENIED as to Dreamscapes’ implied warranty
12 of merchantability, trade usage, and fitness for particular purpose claims.

13 III. ORDER

14 Therefore, it is hereby **ORDERED** that Defendant Eastonmade’s Motion to Dismiss,
15 Dkt. 12, is **GRANTED** as to Dreamscapes’ express warranty claims and implied warranty of
16 title claims and the motion is **DENIED** as to Dreamscapes’ breach of contract claims and breach
17 of implied warranties of merchantability, usage of trade, and fitness for a particular purpose
18 claims.

19 Dated this 1st day of March, 2022.

20 

21 ROBERT J. BRYAN
22 United States District Judge